

**CALENDAR ITEM
C04**

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02/07/17
PRC 7939.1
M.J. Columbus

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Brockway Springs of Tahoe Property Owners Association I and II, Inc.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9680 Brockway Springs Drive, near Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of 26 existing mooring buoys and two marker buoys.

LEASE TERM:

10 years, beginning February 12, 2017.

CONSIDERATION:

\$9,927 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$2,000,000 per occurrence.
2. Buoy Allotment Program: The use of the buoy field will be made available to all members of Brockway Springs of Tahoe Property Owners Association I and II, Inc. in a fair and equitable manner. A buoy allotment program must be maintained during the lease term that will identify how the buoys will be managed, maintained, and distributed for use by the Association's members.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

CALENDAR ITEM NO. **C04** (CONT'D)

Public Trust and State's Best Interests Analysis:

Applicant has a right to use the upland adjoining the lease premises. On June 1, 2009, the Commission authorized a 10-year General Lease – Recreational Use to Brockway Springs of Tahoe Property Owners Association I and II, Inc. ([Calendar Item C51, June 1, 2009](#)). That lease will expire on February 11, 2017. The Applicant is now applying for a General Lease – Recreational Use.

The upland parcels, Assessor's Parcel Numbers (APN) 094-390-005 and 090-380-009, are owned by the Applicant. BST III Owners Association owns APN 090-420-011, the parcel directly in front and lakeward of the Applicant's parcels. The Applicant and BST III Owners Association entered into an agreement that gives the Applicant the right to use the lakefront parcel to access the lake.

The subject mooring buoys and marker buoys facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The buoys have existed for many years at this location. On October 11, 1996, the Tahoe Regional Planning Agency (TRPA) issued a permit for the 26 mooring buoys and two marker buoys. The Applicant's TRPA permit is currently valid. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The mooring buoys do not substantially interfere with the Public Trust needs at this time and at this location.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the issuance of the lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

CALENDAR ITEM NO. **C04** (CONT'D)

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

CALENDAR ITEM NO. **C04** (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Brockway Springs of Tahoe Property Owners Association I and II, Inc., beginning February 12, 2017, for a term of 10 years, for the continued use and maintenance of 26 existing mooring buoys and two marker buoys as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$9,927 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$2,000,000 per occurrence.

EXHIBIT A

PRC 7939.1

LAND DESCRIPTION

Three parcels of submerged land in the bed of Lake Tahoe, situate in Placer County, State of California and lying adjacent to those certain parcels as described in Volume 1494, Page 291, Official Records Placer County, and described as follows:

PARCEL 1 (Buoy Field)

BEGINNING at the northwest corner of Parcel One as described in said Volume 1494, Page 291; thence along the southwesterly prolongation of the northerly line of said Parcel One, South 57°56'21" West 491.00 feet; thence South 39°20'31" East 750.97 feet; thence North 52°08'49" East 419.00 feet to the southwesterly corner of Parcel Two of said Volume 1494, Page 291; thence North 33°14'20" West 137.52 feet; thence North 41°33'17" West 180.43 feet; thence North 29°11'46" West 76.23 feet; thence North 30°43'08" West 127.07 feet; thence North 33°52'22" West 162.58 feet; thence North 07°20'00" West 23.68 feet to the point of beginning.

PARCELS 2 AND 3

Two circular parcels of submerged land 20 feet in diameter lying at or near the west and south corner of the hereinabove described Parcel 1.

EXCEPTING THEREFROM any portion lying landward of elevation 6223 foot Lake Tahoe Datum.

END OF DESCRIPTION

Prepared 05/13/2009 by the California State Lands Commission Boundary Unit.



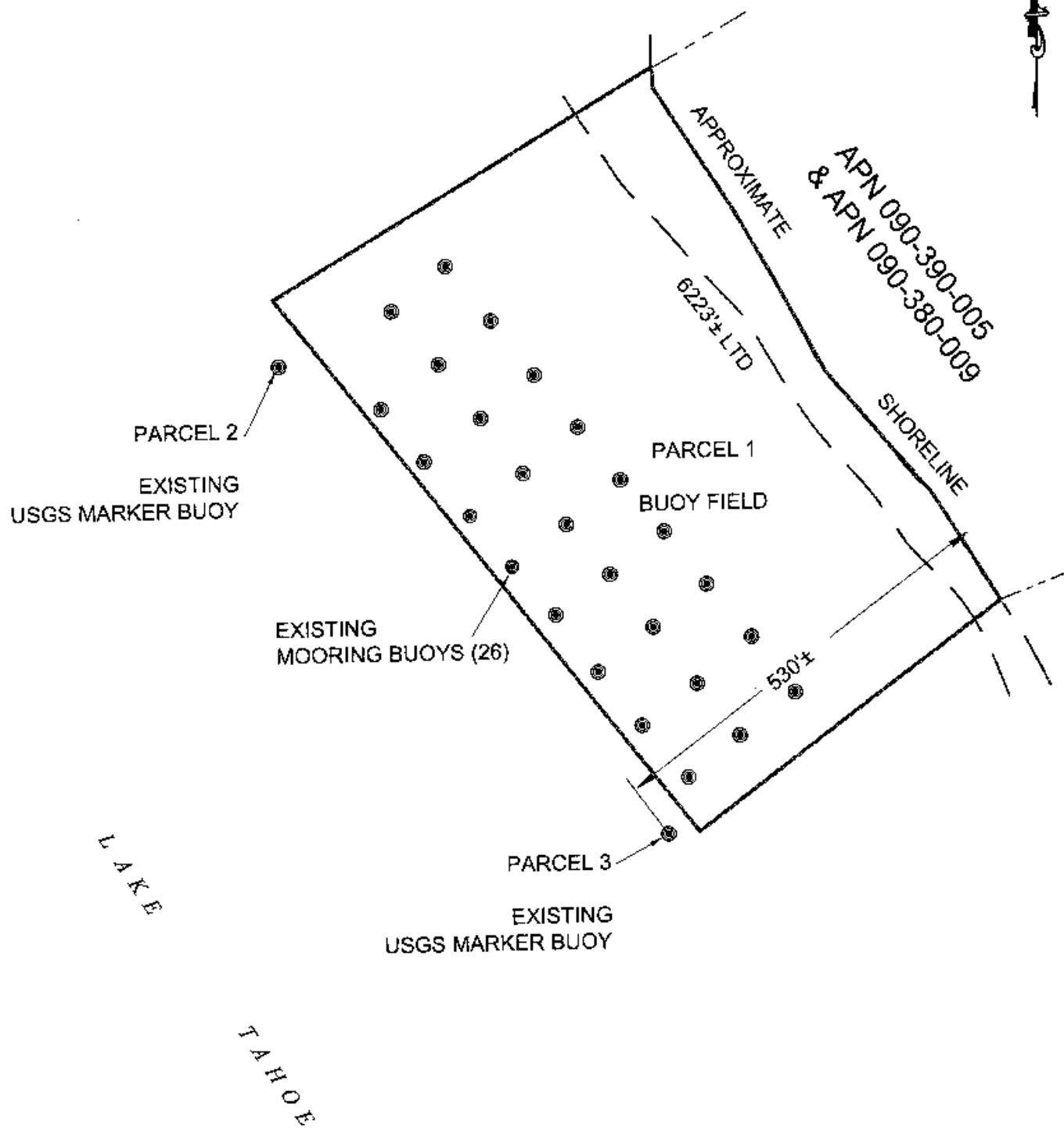


EXHIBIT A

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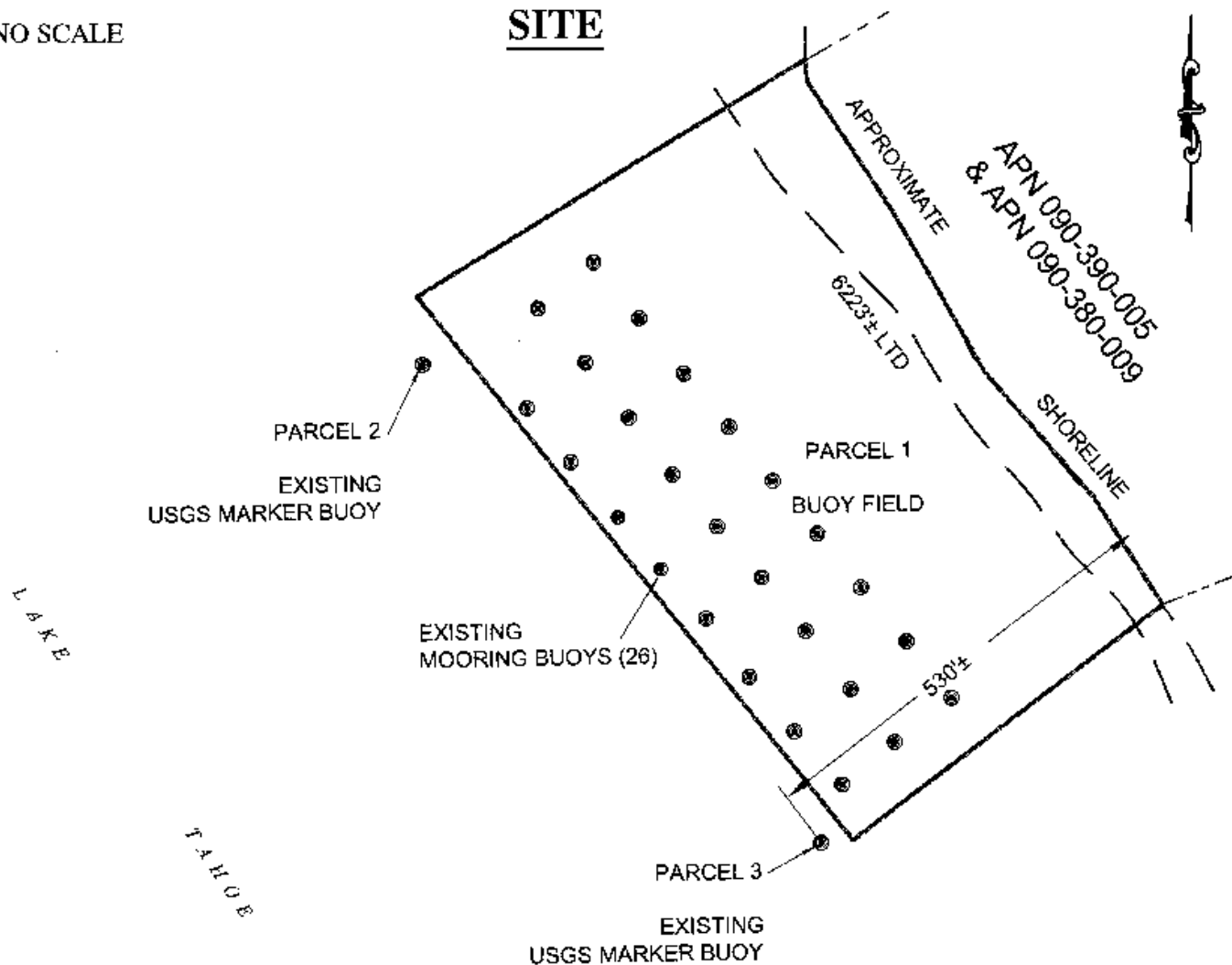
LAND DESCRIPTION PLAT
PRC 7939.1
BROCKWAY SPRINGS OF TAHOE, POA
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

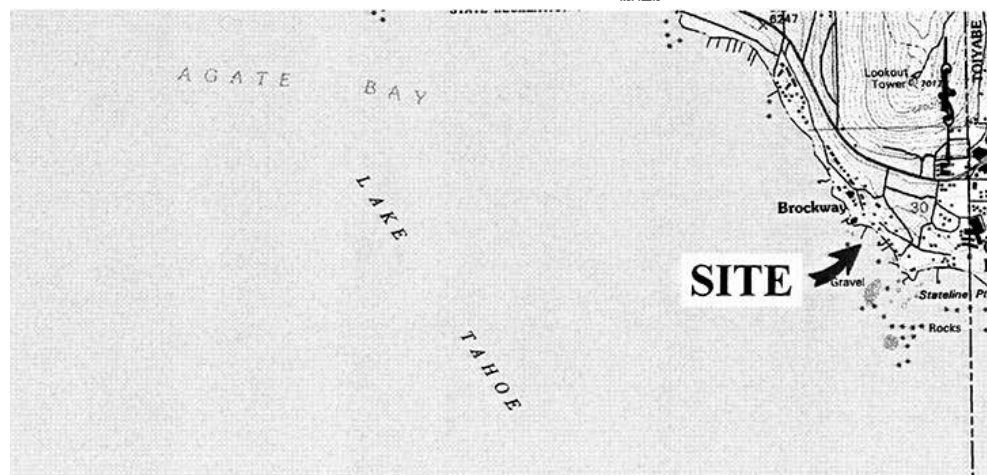
SITE



9680 BROCKWAY SPRINGS DR., NEAR KINGS BEACH

NO SCALE

LOCATION

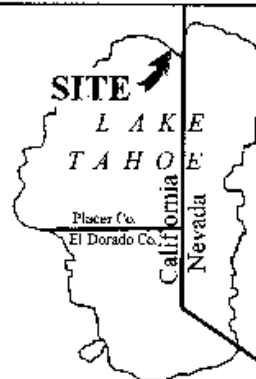


MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 7939.1
BROCKWAY SPRINGS
OF TAHOE, POA
APN 090-390-005
& APN 090-380-009
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



MD 12/29/2016